

APPENDIX A

LAND PROTECTION PLAN

Proposed Tulare Basin Wildlife Management Area Kern, Kings and Tulare Counties, California

Approved By:

Director
Washington, D.C.

Date

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Date

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LAND PROTECTION PLAN

**Proposed Tulare Basin
Wildlife Management Area
Kern, Kings & Tulare Counties, California**

Introduction

This land protection plan outlines resource protection needs, an implementation schedule and priorities, and habitat protection methods the U.S. Fish and Wildlife Service (Service) would use for the proposed Tulare Basin Wildlife Management Area (WMA) in Kern, Kings and Tulare Counties, California. This plan proposes conservation easements as the level of protection needed to meet habitat and wildlife management goals for the project area. The Environmental Assessment (EA) evaluated the environmental effects of creating an approved refuge acquisition boundary to conserve approximately 16,000 acres of wetlands, associated uplands and agricultural land.

Nothing in this plan constitutes an offer to purchase private property, or a usurpation of the authority of the State of California, Kern, Kings and Tulare Counties, or any other jurisdiction to regulate land use within the proposed refuge boundary. This plan is intended to guide the Service's proposed land protection activities subject to the availability of funds and other constraints. To complement this plan, the Service has prepared a conceptual management plan (Appendix B) that describes the general management approaches for the Tulare Basin Wildlife Management Area.

Project Description

The Service proposes to establish an approved refuge land acquisition boundary and provide protection and management within the proposed boundary of the Tulare Basin WMA. The Service's proposed action conserves approximately 16,000 acres of wetlands, associated uplands, agricultural lands, and riparian flood plain that historically have supported both a diversity of native wildlife, cattle grazing, and agriculture (see Chapter 2, Alternative 3 of the EA.). The refuge study area adjoins Kern NWR in western Kern County and extends north to Allensworth in Tulare County with one isolated tract in Kings County east of Kettleman city (see map).

Purpose of the Tulare Basin WMA

The purpose of the Tulare Basin WMA is to; 1) Protect key habitats for wetland dependant and sensitive species in support of the North American Waterfowl Management Plan (NAWMP) and its Central Valley Joint Venture (CVJV) goals for the Tulare Basin, and 2) Support the long term viability of private wetlands and associated in the Tulare Basin.

In close association with the isolated wetland habitats are uplands of varying quality that provide some of the last undeveloped private property in the southern San Joaquin valley. Establishing the WMA would help fulfill the Service's Congressional mandate to conserve, protect, and restore the Nation's wildlife resources, and would contribute toward implementation of the, NAWMP, CVJV Implementation Plan, *Recovery Plan for Upland Species of the San Joaquin Valley, California* (1998) and other plans related to waterfowl and shorebird management.

The proposal to protect approximately 16,000 acres of wildlife habitat in the San Joaquin Valley/Tulare lake basin ecosystem reflects the core mission of the Service to protect wildlife resources of national importance while providing opportunities for the public to appreciate and enjoy the natural heritage of the region.

The authorities for the acquisition are the Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742(a)-754), Endangered Species Act of 1973, as amended (16 U.S.C. 1532-1544, 87 Stat. 884), Migratory Bird Conservation Act of 1929 (16 U.S.C. 715-715d) and Refuge Recreation Act of 1962, as amended (16 U.S.C. 460k-460k-4). The Endangered Species Act of 1973, Fish and Wildlife Act of 1956, and Refuge Recreation Act of 1962 authorize the Service to use funds made available under the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601-4601-11) to acquire lands, waters, or interests therein for fish and wildlife conservation purposes. Federal monies used to acquire private lands through the Land and Water Conservation Fund are derived primarily from oil and gas leases on the outer continental shelf, excess motorboat fuel tax revenues, and the sale of surplus Federal property.

Objectives of the Proposed Action

The Service has two objectives in proposing to create the Tulare Basin WMA:

- To provide the Service with authority to acquire an interest in, or otherwise protect wildlife habitat as a unit of the National Wildlife Refuge System.
- To provide the Service with the opportunity to manage, enhance, and protect the area for the benefit of migratory wildlife, federally listed threatened and endangered species, and other special status and trust species.

Threats to and Status of the Resource to be Protected

Located in the southern San Joaquin Valley the Tulare Basin WMA contains important remnant wildlife habitat representative of the Central Valley. Much of the native habitat in the San Joaquin Valley has been converted to intensive agricultural and urban uses. Establishment of new dairies has begun encroaching on the Tulare Basin WMA project area and wildlife habitats. Application of municipal sewage bio-solids has become an expanding use of low cost arid lands in the southern San Joaquin valley. Suburban sprawl as a result of local population growth has also had an impact on lands near the project area.

The proposed Tulare Basin WMA and southern San Joaquin Valley region supports diverse wildlife habitats including declining native uplands, vernal pools, and riparian habitat along a network of sloughs and creeks. These habitats support federally listed threatened and endangered species on a year-round or seasonal basis including: populations of the San Joaquin kit fox, blunt-nosed leopard lizard, Tipton kangaroo rat, and Buena Vista lake shrew.

The Tulare Basin has historically provided wintering habitat for migratory waterfowl populations in excess of 100,000 annually. Perpetual conservation easements on wetlands and associated upland habitats would sustain the present level of use by wintering waterfowl. Wetland restoration projects could potentially increase carrying capacity and support population levels contained in the Central Valley Joint Venture implementation plan. Protection of the proposed project area would also contribute to maintenance of the few remaining natural uplands left on the

San Joaquin Valley floor. The native uplands are important for the survival and recovery of several listed (Threatened & Endangered) species. Intensive agricultural and municipal developments have altered and diminished the natural landscape. Only 2.9 percent of the 2,950 square mile (7,640 sq. km.) southern San Joaquin valley floor still remain in “good” or better natural habitat condition, according to the 1990 California Energy Commission report (*Southern San Joaquin Valley Ecosystems Protection Program - Natural Lands Inventory and Maps*). Residents of and visitors to the region would benefit from protection and management of these diverse wildlife habitats, abundant wildlife and the unique open space.

Protection Methods

A variety of habitat protection methods can be used to conserve the natural resources of the area within the boundary of the proposed Tulare Basin WMA. Service policy is to adopt habitat protection measures and strategies that involve acquiring the minimum possible interest or rights in lands and waters. The goal is to leave as large a proportion of these rights as possible in private ownership and still meet the defined resource objectives.

The Service first considered the likelihood of the land/habitat in question being protected under local government action (e.g., zoning, ordinances) designating specific geographic areas where particular uses are either permitted or prohibited; such as residential, business, or open space for the parks. The Service also considered the likelihood of the land/habitat in question being protected under a federal/state/local permit, license or other program. Since the above protection methods are not available or not being used at the local and state level to protect these lands, the Service examined the degree of land acquisition which may be needed to protect habitat resources.

These acquisition options range from the acquisition of land by the Service in fee-title, conservation and agricultural easements, cooperative agreements, or memorandum of understanding. Since habitat protection by means of local or state regulatory controls appears unlikely, the Service believes conservation easements represent the minimum possible interest or rights in lands and waters which would need to be acquired to meet the goal of leaving as large a proportion of these rights as possible in private ownership and still meet the habitat protection objectives. Establishment of the Tulare Basin WMA would provide a coordinated effort to protect native habitats and assist recovery of declining wildlife populations of the San Joaquin Valley.

The term “conservation” is defined to include a wide variety of habitat protection methods. On lands owned and managed by public agencies, cooperative agreements and coordinated planning/management efforts, including shared resources, could be used to conserve natural resources within the proposed refuge boundary. “Conservation” also includes acquisition of land or interest therein by the Service for inclusion in the National Wildlife Refuge System. The Service could acquire fee-title, conservation or agricultural easements, long-term leases, and/or cooperative agreements with willing public agencies and willing landowners through purchase, donation, transfer, exchange, or written agreement.

While the Service’s preferred alternative (EA, Chapter 2, Alternative 3) is acquisition of 16,000 acres of conservation easements with the potential of not more than 2,000 acres purchased in fee,

habitat protection methods that could be used by the Service to protect habitats within the proposed Tulare Basin WMA are described below:

Conservation Easements

Conservation easements provide the Service the opportunity to manage lands for their fish and wildlife habitat values. The easement would preclude uses inconsistent with the Service's management objectives as outlined in Appendix B. In effect, the landowner transfers certain development and property rights to the Service for restrictive uses, as specified in the easement. Property taxes would remain the responsibility of the landowner.

Easements would likely be useful when (1) most, but not all, of a private landowner's uses are compatible with the Service's management objectives, and (2) the current owner desires to retain ownership of the land and continue compatible uses under the terms mutually agreed to in the easement. Land uses that are normally restricted under the terms of a conservation easement include, but are not limited to:

- Development rights (residential, industrial, etc.)
- Alteration of the area's natural topography
- Uses which adversely effect the area's flora and fauna
- Crop type (cereal grains, corn, etc.)
- Alteration of natural water regimes.

Conservation easements are the method proposed to protect these valuable habitats while maintaining private ownership. Conservation of these habitats and their associated species would be a cooperative responsibility between the Service and landowners.

Fee-Title Acquisition

The Service acquires land by outright purchase (fee-title) when (1) the land's fish and wildlife resources require permanent protection that is not otherwise available, (2) the land is needed for development associated with public use, (3) a pending land use could otherwise harm fish and wildlife resources, or (4) purchase is the most practical and economical way to assemble small tracts into a manageable unit. Fee-title acquisition often transfers all property rights owned by the landowner, including mineral and water rights, to the federal government. A fee title interest may be acquired by purchase, donation, exchange, or transfer. The Service proposes to limit fee acquisitions to no more than 2,000 acres. Lands acquired would become part of the Kern National Wildlife Refuge Complex. Any additional fee protection could be considered in the future should some unforeseen event necessitate additional protection beyond the proposed 2,000 acre limit. Such a change in the land protection strategy would require the Service to analyze the potential effects on the quality of the human environment as required by the National Environmental Policy Act (NEPA).

Summary of Planning and Land Acquisition Processes

The Director of the Service, in consultation with the Manager of the California/Nevada Operations (CNO), would approve the designation of the project boundary upon completion of the planning and environmental coordination process. This process includes compliance with NEPA, the Endangered Species Act, and other federal regulations and executive orders. Based on NEPA

and other compliance documents, the CNO Manager, in consultation with the Regional Chief of the National Wildlife Refuge System will decide whether to establish the proposed project boundary or not. If the decision is to establish the WMA project boundary, the CNO Manager will determine if the Tulare Basin WMA project boundary would have a significant impact upon the quality of the human environment, and make a formal recommendation to the Director for approval. If the selected alternative is determined not to have a significant impact, a Finding of No Significant Impact (FONSI) will be issued. If the selected alternative is determined to have a significant impact, a Notice of Intent to prepare an Environmental Impact Statement (EIS) will be issued.

With the selection of an approved boundary and successful completion of the NEPA process, the selected project alternative can be implemented as described in this Land Protection Plan and Conceptual Management Plan.

The Service's planning process includes the following steps:

- Preliminary agency planning
- Concept plan issued
- Public involvement
- Environmental assessment and other planning documents released
- Public review period of planning documents
- Notice of Decision (whether to establish the WMA or complete an EIS)

Public Scoping and Involvement

In July 2002, the Service held two public scoping meetings with potential affected landowners and interested individuals, agencies, and organizations to discuss the proposal to establish the Tulare Basin WMA. At the request of landowners and interest groups, the Service expanded the proposed project area from approximately 12,000 acres to 16,000 acres.

Throughout the scoping process, the Service has consulted with a number of federal, state, and local elected officials and agencies and private organizations to solicit their views of the proposal. Parties contacted have included: California Department of Fish and Game, California Department of Water Resources, Kern, Kings and Tulare Counties, local water districts, Farm Bureau(s) and a number of private organizations. As the result of the above public involvement, the Service selected the preferred alternative represented in this Land Protection Plan.

The selection and approval of a project boundary only allows the Service to acquire lands or interest in lands from willing sellers at fair-market value or to enter into management agreements with interested landowners. An approved project boundary does not grant the Service jurisdiction or control over lands within the boundary, and it does not automatically make lands within the project boundary part of the National Wildlife Refuge System. Lands do not become part of the National Wildlife Refuge System unless they are acquired by the Service or are placed under an agreement that provides for management as part of the refuge system.

No new or additional zoning laws would be imposed by the Service within the approved project boundary. Any landowner within an approved project boundary retains all existing rights,

privileges, and responsibilities of private-land ownership as determined by local, city, or county jurisdictions. Again, lands remain under the control of the owner until management rights or title to the property has been transferred to or has been acquired by the Service.

The Service land protection policy is to acquire land only when other protective means are not appropriate, available, or effective. The Service strives to obtain the minimum interest necessary to reach management objectives, once land is acquired or retained.

The Service is looking at the long-term protection of this area through conservation easements. Acquisition of private land easements will be phased in over time as funds become available and willing participants come forward. The acquisition and habitat protection program is expected to take several years. Initial acquisition efforts would focus primarily on protecting blocks of land having the highest biological values. The Service recognizes that some lands identified within the approved project boundary may never become part of the National Wildlife Refuge System.

Willing Seller Policy

Service policy is to acquire lands or interest in lands only from willing participants under general authorities such as the Fish and Wildlife Act of 1956, the Endangered Species Act, the Migratory Bird Conservation Act, and the Refuge Recreation Act. Landowners within the project boundary who do not wish to sell their property or any other interest in their property are under no obligation to enter into negotiations or to sell to the Service.

The Service, like other federal agencies, has been given the power of eminent domain, which allows the use of condemnation to acquire lands and other interest in land for the public good. This power, however, is seldom used and is not expected to be used in this project. The Service usually acquires land from willing participants and is not often compelled to buy specific habitats within a specific time frame.

In all cases the Service is required by law to offer 100 percent of fair-market value for lands to be purchased as determined by an approved appraisal that meets professional standards and federal requirements.

Under the Uniform Relocation Assistance and Real Property Acquisition Policies Act, landowners who sell their property to the Service are eligible for certain benefits and payments which include:

- Reimbursement of reasonable moving and related expenses or certain substitute payments.
- Replacement housing payments under certain conditions.
- Relocation assistance services to help locate replacement housing/farm/or business.
- Reimbursement of certain necessary and reasonable expenses incurred in selling real property to the federal government.

Land Protection Priorities Within the Planning Area Boundary

The Service would seek acquisition of conservation easements covering not more than 16,000 acres of land within the proposed refuge boundary. The Service has prepared a table (Table 1) that lists assessor parcel numbers, acreage and priority for acquisition should the property owner be willing to sell and funding become available. Prioritizing the lands within the proposed boundary can be difficult to calculate, as land uses and conditions can change rapidly. The Service has placed first priority on existing managed wetlands owned in parcels that also include high quality upland habitat, non-irrigated pastures and habitat that may be occupied or used by native species. Second in priority would be isolated wetlands lacking associated upland habitat and farmland with wildlife compatible crops (e.g., small grains), irrigated or dry pastures that provide migratory bird habitat as well as a buffer from more intensive land uses and disturbance. Agricultural land that could be converted to wildlife habitat with relatively little expense could also be considered as priority 2 lands. Third in priority would be lands needing conversion from non-friendly wildlife land use (e.g., vineyards, orchards), to wildlife friendly use (e.g. pasture, small grains). Fourth priority lands are not targeted for inclusion in the WMA, such as state, federal or water district properties.

In selecting the priorities for Table 1, aerial photographs were viewed, and whenever possible site visits were made to verify natural features. Final determination of priority lands would occur when final negotiations are made for the purchase of a conservation easement.

Social and Cultural Impacts

The current quality of life for communities and individuals around the proposed refuge is expected to remain the same or improve slightly as a result of the establishment of the WMA.

The establishment of the WMA is not expected to change most land use activities or public use patterns in the vicinity of the project area. Some landowners suggest that the easement program will allow them to continue active management of their wetlands.

Coordination and Consultation

The Service has worked with a variety of interested parties to identify issues and concerns associated with the proposed WMA establishment. These interested parties include members of the public, interested private landowners, local organizations, elected officials, and federal, state and local government agencies. The Service has developed a strategic view of this proposal by incorporating the work of CVJV partners, and integrating planning done by The Nature Conservancy, Ducks Unlimited, and various public agencies into this proposal. The Service's public involvement activities included hosting meetings, developing a mailing list, requesting information, undertaking consultations, and responding to inquiries. The Service has provided information about the proposal to the media and other interested or affected parties throughout the public scoping period.

The Service has invited and continues to encourage public participation through the public involvement program consisting of public notices, meetings with potential affected landowners, government agencies, and private organizations. Three planning updates have been prepared and sent to landowners and other interested parties. Additionally, two public scoping meetings have

been presented to interested individuals. The Environmental Assessment addresses coordination and consultation further in Chapter 1, Section 1.5.1, and Chapter 5.

Summary Of Proposed Action

In light of the valuable resources in the Tulare Basin and continuing threats to these resources, the Service proposes to establish the new Tulare Basin WMA. The WMA would protect approximately 16,000 acres. This proposed project would allow the Service to conserve, and protect wetlands, associated uplands, vernal pools, riparian corridors and wildlife compatible crop lands through purchase of perpetual conservation easements. Conservation of these habitats and their associated species would be a cooperative responsibility between the Service and landowners. The Service proposes limited fee acquisition of not more than 2,000 acres, where necessary to secure protection of key habitat that links and supports adjacent wildlife habitats.

The establishment of a WMA would assist with the recovery of migratory waterfowl populations, shorebirds and neotropical migratory birds of North America's Pacific Flyway. Establishing a WMA would also extend protection of valuable wetlands, and assist with protection of resident threatened and endangered species within the project study area.

The study area is located near Kern and Pixley National Wildlife Refuges in northwest Kern and southern Tulare counties and the southern San Joaquin Valley, California. Three small towns frame the proposed easement areas, Wasco, Lost Hills (Kern County) and Tulare (Tulare County), California (EA, Figure 1)

Place holder for the Tract Maps.